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1387, 1390; Dec. Dig. § 601 (1), 612 (1).\* 13 Va.-W. Va. Enc. Dig. 806.

For other definitions, see Words and Phrases, First and Second Series, Heirs.]

**5. Wills (§ 545 (1)\*)—Construction—Estates Created—"Heirs."**—The word "heirs," as so used, clearly means "children."

[Ed. Note.—For other cases, see Wills, Cent. Dig. § 1171; Dec. Dig. § 545 (1).\* 13 Va.-W. Va. Enc. Dig. 806.]

**6. Wills (§ 493\*)—Construction—Estates Created.**—The limitation over to the devisee's best friend is void for uncertainty, since the law requires the beneficiary of a testator to be pointed out with certainty.

[Ed. Note.—For other cases, see Wills, Cent. Dig. § 1077; Dec. Dig. § 493.\* 13 Va.-W. Va. Enc. Dig. 805.]

**7. Wills (§ 26\*)—Capacity to Make.**—Where testator, over 18, but under 21, years of age, devised realty and personalty, the will was void as to the realty and valid as to the personalty, so that his real estate passed to his next of kin under the statutes of descent and distribution, and the personalty passed under the will to his personal representative.

[Ed. Note.—For other cases, see Wills, Cent. Dig. § 54; Dec. Dig. § 26.\* 13 Va.-W. Va. Enc. Dig. 709.]

Appeal from Circuit Court, Smyth County.

Suit by H. M. Heuser and R. M. Early and wife against S. Guy Arnold and others. From a decree dismissing the cause as to all parties, Early and wife appeal. Reversed.

*H. M. Heuser*, of Wytheville, for appellants.

*S. B. Campbell*, of Wytheville, for appellees.

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CAROLINA, C. & O. RY. et al. v. HILL.

Sept. 11, 1916.

[89 S. E. 902.]

**1. Railroads (§ 113 (6)\*)—Damages from Construction—Persons Liable—Concurrent Negligence.**—In an action for injuries to plaintiff's farm by the construction of a railroad brought against the railroad company and its contractors, where the injuries were caused by the concurrent negligence of both and the damages were not separable and the negligence of either was sufficient to produce the entire loss, defendants were jointly and severally liable.

[Ed. Note.—For other cases, see Railroads, Cent. Dig. § 359; Dec. Dig. § 113 (6).\* 11 Va.-W. Va. Enc. Dig. 567.]

**2. Appeal and Error (§ 1004 (1)\*)—Question of Fact—Verdict.**—Where the injuries to plaintiff's farm and mill from defendant's neg-

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

ligence were numerous and varied, the determination of facts and the quantum of the damages was peculiarly for the jury, and, where it was not actuated by passion or prejudice, its finding would not be disturbed as excessive.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. §§ 3944, 3946; Dec. Dig. § 1004 (1).\* 1 Va.-W. Va. Enc. Dig. 605.]

Error to Circuit Court, Dickenson County.

Action by the Carolina, Clinchfield & Ohio Railway and others against Elkanah Hill. Judgment for plaintiff, and defendants bring error. Affirmed.

*Chase & Daugherty*, of Grundy, *Powell, Price & Simmonds*, Bristol, *W. H. Rouse*, of Clintwood, and *H. C. Morison*, of Johnson City, Tenn., for plaintiffs in error.

*S. H. & G. C. Sutherland*, of Clintwood, and *T. L. Sutherland*, of Lebanon, for defendant in error.

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IRVINE v. BARRETT.

Sept. 11, 1916.

[89 S. E. 904.]

**1. Libel and Slander (§ 86 (1)\*)—Pleading—Innuendo.**—If words originally charged are not actionable per se, they cannot by amendment be enlarged in their meaning merely by addition of an innuendo.

[Ed. Note.—For other cases, see Libel and Slander, Cent. Dig. § 205 Dec. Dig. § 86 (1).\* 9 Va.-W. Va. Enc. Dig. 286.]

**2. Limitation of Actions (§ 127 (16)\*)—Effect of Bringing Suit.**—In action for slander, an order sustaining demurrer to the complaint substantially found that the words were not actionable per se. After demurrer to the amended complaint was sustained, plaintiff again amended, charging specific words, actionable per se, but such amendment was filed 18 months after the alleged slander. Held, that the action was barred by limitations.

[Ed. Note.—For other cases, see Limitation of Actions, Cent. Dig. § 545; Dec. Dig. § 127 (16); Pleading, Cent. Dig. § 688.\* 9 Va.-W. Va. Enc. Dig. 429.]

**3. Limitation of Actions (§ 127 (16)\*)—Actionable Words—Separate Causes of Action.**—Words to the effect that plaintiff stole \$1,500 are so dissociated from those that defendant's business was short \$1,500 for which he could not account, when not alleged to have been spoken at the same time or to the same person, as to constitute a new cause of action.

[Ed. Note.—For other cases, see Limitation of Actions, Cent. Dig.

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